

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF NEW MEXICO

3

4

5

6 UNITED STATES OF AMERICA,

7

Plaintiff,

8

-vs-

NO: CR 05-1849 JH

9

GEORGE OSGOOD,

10

Defendant.

11

12

13

14

15

16

17

TRANSCRIPT OF PROCEEDINGS

18

SENTENCING HEARING

19

September 29, 2004

20

21

22

23

24

BEFORE: HONORABLE JUDITH C. HERRERA
UNITED STATES DISTRICT JUDGE

25

1 APPEARANCES

2 For the Plaintiff:

3 US ATTORNEY'S OFFICE
4 PO Box 607
5 Albuquerque, NM 87103-0607
6 505-346-7274
7 BY: JAMES R.W. BRAUN, ESQ.
8 james.braun@usdoj.gov

9 For the Defendant:

10 LAW OFFICE OF AMY SIRIGNANO, PC
11 1011 Lomas Blvd., NW
12 Albuquerque, NM
13 505-242-2770
14 BY: AMY SIRIGNANO, ESQ.
15 amy@nmlaw.com

16 Also present:

17 John Lovato, Probation Officer
18
19
20
21
22
23
24
25

1 (Court in session at 9:58 a.m.)

2 THE COURT: Next is USA vs Osgood,
3 CR-05-1849.

4 MR. BRAUN: James Braun on behalf of the
5 United States.

6 THE COURT: Good morning, Mr. Braun.
7 Good morning, Ms. Sirignano.

8 MS. SIRIGNANO: Good morning, Your Honor.
9 Amy Sirignano.

10 THE COURT: Good morning, Mr. Osgood.
11 We're here today on sentencing. Let me
12 say that I have received and reviewed the
13 presentence report. I've reviewed objections to the
14 presentence report submitted by the defendant. I
15 have also reviewed the government's response to the
16 defendant's objections, and I have also reviewed the
17 addendum to the presentence report and the second
18 addendum to the presentence report.

19 And there were also a number of medical
20 records that were submitted as an attachment to the
21 presentence report. And I've reviewed those,
22 although they're voluminous, and I haven't committed
23 it all to memory. But those are the matters that I
24 have reviewed.

25 There were a number of letters that were

1 presented as character references. I have reviewed
2 those as well.

3 So let me ask: Have you had an adequate
4 opportunity at this point to review the presentence
5 report, Ms. Sirignano?

6 MS. SIRIGNANO: Yes, Your Honor.

7 And if I may approach, I've got one more
8 letter from Mr. Osgood's son that didn't get
9 attached. And I've showed it to the government and
10 Probation, but I just wanted to allow the Court to
11 have it.

12 THE COURT: Sure. And I did see one from
13 his son.

14 MS. SIRIGNANO: Oh, you did? Okay, very
15 good.

16 THE COURT: It's an e-mail?

17 MS. SIRIGNANO: Yes, Your Honor.

18 THE COURT: I did see one. I don't know
19 where in this packet it is at this moment.
20 Actually, I do know.

21 MS. SIRIGNANO: Thank you, Your Honor. I
22 didn't know that they got attached or not.

23 THE COURT: Yes. It's attached to your
24 objections, is where I'm finding it.

25 MS. SIRIGNANO: Thank you, Your Honor.

1 You're right. It's Exhibit C to my Document 1714,
2 my objections.

3 THE COURT: Just so we're talking about
4 the same thing, I'm showing it to be dated
5 September 1st, 2009.

6 MS. SIRIGNANO: That's correct, Your
7 Honor.

8 THE COURT: Okay, all right. Go ahead.

9 MS. SIRIGNANO: Your Honor, at this time,
10 as a housekeeping matter, I'd like to withdraw my
11 argument regarding the two years of supervised
12 release.

13 The government and I spoke after my
14 sentencing memorandum and objections were filed.
15 And it was my error to argue for two years, as the
16 11(C)(1)(c) plea agreement is a binding plea
17 agreement. And in the plea itself, paragraph 5, it
18 stipulates to a term of three years. So I'd like to
19 withdraw that argument.

20 THE COURT: All right. And I did note
21 that the government's response indicated that you
22 all had come to that conclusion. All right. So I
23 understand that you have withdrawn that argument.

24 At this point, are there any remaining
25 objections?

1 MS. SIRIGNANO: Yes, Your Honor, the
2 offense conduct. The government and Probation and I
3 have discussed this briefly. There are
4 paragraphs 43 to 69, 72, 73, 77 through 120, 148
5 149, 151, 152, 154 through 156, which I set out in
6 my informal letter, which I'd like to incorporate.
7 And I've attached it as Exhibit A to the sentencing
8 memorandum.

9 And as I stated in the sentencing
10 memorandum, Your Honor, these paragraphs have no
11 relevance to Mr. Osgood. The Court does not need
12 them at sentencing as a factual determination.

13 We've got a 30-month 11(c)(1)(C) plea
14 agreement here. And although the government argues
15 that it sets out the nature and scope of the
16 conspiracy, I would like to argue that the 35
17 paragraphs do relate to Mr. Osgood in the offense
18 conduct set forth, his nature and scope and his
19 involvement in the conspiracy.

20 And these extraneous and superfluous
21 paragraphs might impact his security classification,
22 Your Honor. Mr. Osgood is not a dangerous
23 individual. He has no prior felony convictions. He
24 was not a major player in this conspiracy.

25 His primary contact in this conspiracy was

1 with Mr. Jarvis, and he had really no other contact
2 with the majority of the other co-conspirators set
3 out in this conspiracy. And we would just ask that
4 those paragraphs be deleted from his presentence
5 report.

6 THE COURT: All right. Let me hear from
7 Mr. Braun on this.

8 MR. BRAUN: Your Honor, our response is
9 set out in our pleading.

10 As you're well aware, the Court can
11 consider any relevant evidence or information in
12 imposing a sentence in this case. The defendant
13 does not argue that any of the information contained
14 in those paragraphs is inaccurate. And the United
15 States submits that it is relevant to understand the
16 scope of the overall conspiracy of which the
17 defendant has admitted he is a member.

18 THE COURT: All right. Is there any
19 comment from Probation?

20 THE PROBATION OFFICER: No, Your Honor.
21 We stand by our recommendation in the addendum.

22 THE COURT: All right. Thank you.

23 Let me ask you, Ms. Sirignano, if you
24 could elaborate for just a moment on how those
25 paragraphs would impact his security classification?

1 MS. SIRIGNANO: Well, I understand from
2 the Bureau of Prisons, when they classify someone,
3 Your Honor, that they look at the nature and the
4 scope and determine whether or not he is violent
5 versus nonviolent, the type and the sophistication
6 of the charges.

7 And so those paragraphs are specific as to
8 each other defendant in the conspiracy. And I'm not
9 arguing, Your Honor, that he wasn't involved in this
10 conspiracy. I'm not arguing that he wasn't part of
11 this conduct and the overarching conspiracy.

12 My argument is that the presentence report
13 is Mr. Osgood's presentence report. It's not
14 Mr. Berthod's or Mr. Trujillo's or Mr. Jarvis' or
15 Mr. Ripley's presentence report.

16 My client's primary contact was with
17 Mr. Osgood, and he had very little contact with the
18 other co-conspirators. And we would just like the
19 presentence report to reflect his conduct and his
20 part of the conspiracy, and not everybody else's.

21 The Bureau of Prisons has told me that
22 when Mr. Osgood is classified, they look primarily
23 at the presentence report for classification
24 purposes. That's why I attached, at the Bureau of
25 Prisons' suggestion, all those medical records, so

1 there would be an expedited classification.

2 I wouldn't want all this other negative
3 extensive involvement of others in Mr. Osgood's
4 presentence report, which might have him classified
5 at a higher level and could possibly prevent his
6 medical treatment.

7 And Mr. Osgood has been cooperative all
8 along. Once he was arrested, he has been at
9 Torrance County. We negotiated a plea agreement in
10 due course. And I would just ask that these
11 paragraphs be stricken just because, you know,
12 Mr. Braun is saying that I don't argue that they're
13 inaccurate.

14 Well, quite frankly, I haven't worked up
15 Mr. Berthod's case or Mr. Ripley's case. We
16 participated in one here before this Court. And
17 quite frankly, I don't know if they're accurate or
18 not. I haven't done the extensive research to
19 figure out, you know, if each paragraph for
20 Mr. Jarvis or Mr. Ripley is accurate or not.

21 I just don't think it's relevant to the
22 scope of Mr. Osgood's involvement. And Your Honor,
23 I would just ask that they be stricken.

24 THE COURT: All right.

25 Is there any other comment on this issue?

1 MR. BRAUN: Well, Your Honor, this is the
2 information that's contained in discovery. And you
3 know, of course it references numerous
4 co-defendants, but those are the other members of
5 this conspiracy.

6 It would be one thing if there was -- as
7 part of this conspiracy, other defendants were
8 engaging in burglaries or crimes of violence or
9 something like that, and the defendant didn't
10 participate in that.

11 But that's not the case. These paragraphs
12 lay out the marijuana conspiracy that the defendant
13 was a member of.

14 And to the extent the Bureau of Prisons
15 uses that to classify him, I don't think that should
16 be the Court's concern because this is accurate,
17 relevant information that the Court has also used to
18 determine the sentences of other co-defendants in
19 this case.

20 THE COURT: All right. The paragraphs
21 that are contained in this presentence report do
22 reflect part of the relevant conduct, so I think
23 that they are appropriately noted in the presentence
24 report. So I'm going to deny the objection.

25 And I do agree with the comment that

1 Mr. Braun made that similar information has been
2 used in the presentence reporting and the sentencing
3 proceedings of other co-defendants who have been
4 sentenced thus far in this case.

5 And while perhaps this defendant has not
6 challenged the accuracy, I would note that the
7 others who have been sentenced up to this point have
8 not challenged the accuracy of the other paragraphs,
9 either. So I will deny the -- or I'll overrule the
10 objections.

11 I do note this is an 11(c)(1)(C) plea
12 agreement. Having addressed the objections, let me
13 state at this point that I will adopt the factual
14 findings that are contained in the presentence
15 report. It does not appear that any evidentiary
16 hearing is necessary this morning.

17 So if there are any additional comments,
18 Ms. Sirignano, I'll allow you to make them at this
19 time.

20 I do accept the 11(c)(1)(C) plea
21 agreement.

22 MS. SIRIGNANO: Thank you, Your Honor.

23 The final argument, Your Honor, is
24 Mr. Osgood's medical condition and his ongoing
25 treatment and care.

1 Mr. Osgood was arrested a year ago
2 yesterday. He has approximately 14 months and three
3 days left, he reminds me this morning, of his
4 30-month sentence pursuant to the 11(c)(1)(C) plea
5 agreement.

6 My informal letter, which was attached as
7 Exhibit A to the presentence -- or excuse me, the
8 sentencing memorandum, sets forth the monitoring
9 that Torrance County has done.

10 And I have to say thank you kindly to
11 Mr. Lovato for setting out in extensive detail in
12 the presentence report and the two addendums the
13 care that's going on and the investigation that he
14 did to explain to the Court fully Mr. Osgood's's
15 medical condition.

16 He's been diagnosed with cirrhosis,
17 cirrhotic ascites, which is a fluid buildup; a
18 history of esophageal varices with bleeding;
19 alcoholism, which has been in remission;
20 hepatitis C; gastroesophageal reflux disease; and
21 depression, which was diagnosed in 1984.

22 In his last treatment on May 20th of 2009
23 at the University of New Mexico Hospital, he saw
24 Dr. Matthew Smith and Dr. Dhungel, both from
25 internal medical and gastroenterology.

1 And Torrance County has been taking the
2 position that all he has is hepatitis C, and I do
3 thank Torrance County for monitoring Mr. Osgood's
4 condition.

5 However, he's been asking a for blood
6 test. He last requested in writing a blood test on
7 Monday, September 21st, which has not occurred yet.

8 What the physicians set forth in their
9 medical notes, I attached as Defendant's Exhibit B.
10 Defendant's Exhibit B was the most recent visit to
11 the gastroenterology clinic.

12 And so hepatitis C is definitely one
13 issue, but the cirrhosis and the ascites also need
14 monitoring. And the doctors have suggested that he
15 be referred to a hepatitis C clinic and have a
16 number of laboratory tests run, which is on page 6
17 of my sentencing memorandum.

18 And also some treatment to see if he has
19 some kind of liver cancer or comorbid liver disease,
20 in addition to the hepatitis C.

21 And so, Your Honor, at this time we would
22 just ask that you recommend a Medical Center, a BOP
23 Medical Center. Mr. Lovato this morning told me
24 that there are three medical centers that are able
25 to treat Mr. Osgood's conditions.

1 Springfield, Missouri, where there's a
2 dialysis facility, in the event that happens while
3 he's in custody; Fort Worth, Texas, and Rochester,
4 New Mexico. My client prefers Fort Worth, Texas, so
5 his son could visit him. But those are the three
6 medical centers.

7 I would also request that the Marshals
8 Service expedite his classification into a BOP
9 medical facility. Both Torrance County and the
10 physicians have set forth and Mr. Lovato, in his
11 second addendum, that these hepatitis C treatments
12 take about one year, two times a week.

13 And right now Mr. Osgood has 14 months and
14 three days remaining in custody, so he is just
15 anxious to get to a BOP facility so he can start
16 these hepatitis C treatments.

17 Right now Torrance County is monitoring
18 him, but no active medical treatment is ongoing at
19 this point.

20 And so, Your Honor, I thank you for
21 considering the doctors' notes and the medical
22 records. And I just ask that he be classified
23 forthwith and that a medical facility be in his
24 future.

25 THE COURT: All right. You said,

1 "Rochester, New Mexico." I'm assuming you meant
2 Minnesota.

3 MS. SIRIGNANO: Sorry.

4 THE COURT: All right.

5 Mr. Osgood, if there's anything you would
6 like to say before sentence is imposed, you may do
7 so at this time.

8 THE DEFENDANT: I'd just like to make a
9 short statement.

10 THE COURT: Sure.

11 THE DEFENDANT: Judge Herrera, I'd like to
12 apologize to the 10th District Court and the people
13 in New Mexico for my actions. I realize now that
14 the penalties for the crime I committed cost the
15 government a considerable amount of time, effort and
16 money to investigate, prosecute and incarcerate me.

17 I made a bad decision and tried to make
18 the fast buck. It was the wrong thing to do, and I
19 take full responsibility for my actions.

20 I would also like to apologize to my
21 family, who no doubt have also been hurt by my
22 actions. All I can do is hope that they can find it
23 in their hearts to forgive me and help me move on
24 past this chapter in our lives.

25 I would like to especially thank my son

1 Allen for his help and support during these very
2 difficult times.

3 And I would just reiterate that I am
4 anxious to receive treatment and/or at least a
5 diagnosis to find out exactly where I stand on my
6 hepatitis C. I did get typed in the last year, and
7 I have hepatitis C1a, which is the most difficult
8 one to treat. It's the most resistant to treatment,
9 and so I'm kind of anxious.

10 And ascites is the final stage of liver
11 disease. As it was explained to me, you either quit
12 drinking or you die or buy a new liver, you know.

13 I apologize for taking up so much of the
14 Court's time. That's all I have to say.

15 THE COURT: All right, Mr. Osgood. Thank
16 you.

17 Mr. Braun, is there any comment from the
18 government?

19 MR. BRAUN: Just that we would concur with
20 the defendant's request for a prompt designation.

21 THE COURT: All right. Thank you,
22 Mr. Braun.

23 Is there anything further from Probation?

24 THE PROBATION OFFICER: No, Your Honor.

25 THE COURT: All right. Thank you.

1 All right. Mr. Osgood, I will recommend
2 that your sentence be served in a medical facility,
3 and I will also recommend that you be designated as
4 expeditiously as possible.

5 And I would also ask, pending your
6 designation to a BOP facility, if the Marshals
7 Service could look into any necessary medical
8 treatment. And again, I'm referring to the medical
9 report which is attached to Document 1714.

10 It does indicate that the patient requires
11 laboratories as below to investigate his liver
12 disease and his current hepatitis C. And then it
13 also suggests that the patient be referred to a
14 hepatitis C clinic.

15 So to the extent that any of this can be
16 accomplished before he is designated to a BOP
17 facility, I would ask that that be investigated.

18 THE DEPUTY MARSHAL: We'll talk to
19 Torrance and see what else they could do, Your
20 Honor.

21 THE COURT: All right. Thank you very
22 much.

23 All right. The Court has reviewed the
24 presentence report's factual findings. The Court
25 has considered the advisory sentencing guideline

1 applications and the sentencing factors that are set
2 forth in 18 United States Code Section 3553(a)(1)
3 through (7).

4 The offense level is 23, and the criminal
5 history category is 1, which establishes a guideline
6 imprisonment range of 46 to 57 month.

7 However, under Rule 11(c)(1)(C) of the
8 Federal Rules of Criminal Procedure, the Court
9 accepts the plea agreement, which includes a
10 specific sentence of 30 month, and the Court is
11 satisfied that the agreed sentence departs for
12 justifiable reasons.

13 The Court notes the defendant conspired to
14 distribute 50 kilograms and more of marijuana
15 between 1998 and August 25, 2005.

16 As to Information 1:05-CR-01849-001JH, the
17 defendant George Osgood is committed to the custody
18 of the Bureau of Prisons for a term of 30 months and
19 is placed on supervised release for a term of three
20 years.

21 Now, the Court will recommend that the
22 sentence be served at a BOP facility that can
23 adequately address the defendant's medical needs.
24 So the Court will recommend that the sentence be
25 served at Springfield, Missouri, or Fort Worth,

1 Texas, or in Rochester, Minnesota.

2 Now, the three-year term of supervised
3 release, during that term, the defendant will comply
4 with the standard conditions of supervised release
5 and the following mandatory conditions:

6 The defendant will submit to DNA
7 collection, in compliance with statutory
8 requirements, while incarcerated in the Bureau of
9 Prisons or at the direction of the United States
10 Probation Office.

11 The defendant shall not possess, have
12 under his control or have access to any firearm,
13 ammunition, explosive device or other dangerous
14 weapons as defined by federal, state or local law.

15 The following special conditions will also
16 be imposed: The defendant must participate in and
17 successfully complete a substance abuse treatment
18 program, which may include drug testing, outpatient
19 counseling or residential placement. The defendant
20 may be required to pay a portion of the cost of this
21 treatment and/or drug testing, as determined by the
22 Probation Office.

23 The defendant must refrain from the use
24 and possession of alcohol and other forms of
25 intoxicants and must not frequent places where

1 alcohol is the primary item for sale.

2 The defendant must submit to a search of
3 his person, property, or automobile under his
4 control, to be conducted in a reasonable manner and
5 at a reasonable time for the purpose of detecting
6 drugs or alcohol. That shall be done at the
7 direction of the Probation Office. He must inform
8 any residents that the premises may be subject to a
9 search.

10 The defendant must participate in and
11 successfully complete a mental health treatment
12 program, which may include outpatient counseling,
13 residential placement or prescribed medication as
14 approved by the Probation Officer.

15 The defendant may be required to pay a
16 portion of the cost this treatment, as determined by
17 the Probation Office.

18 The defendant shall have no contact with
19 the co-defendants in this case.

20 Now, based on the defendant's lack of
21 financial resources, the Court will not impose a
22 fine. The defendant will pay a special penalty
23 assessment of \$100, which is due immediately.

24 Lastly, the Court finds that pursuant to
25 the plea agreement, the defendant waives the right

1 to appeal the final sentence imposed by this Court
2 under 18 United States Code, Section 3742(a).

3 So with that, counsel, is there any reason
4 that sentence should not be imposed as I've stated
5 it?

6 MR. BRAUN: No, Your Honor.

7 MS. SIRIGNANO: No, Your Honor.

8 THE COURT: All right. The Court will
9 order sentence imposed as stated.

10 MR. BRAUN: One final matter, Your Honor.

11 THE COURT: Yes.

12 MR. BRAUN: Pursuant to the plea
13 agreement, the United States agrees to dismiss the
14 superseding indictment as to the defendant because
15 he pled to an information. So I'd orally do that at
16 this time, and I will submit a formal motion and
17 proposed order.

18 THE COURT: All right. We'll keep a
19 lookout for your proposed order. And once we
20 receive it, I will enter it.

21 MR. BRAUN: Thank you.

22 MS. SIRIGNANO: Thank you, Your Honor.

23 (Court in recess at 10:23 a.m.)

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

REPORTER'S CERTIFICATE

I, Paul Baca, Official Court Reporter for
the US District Court, District of New Mexico, do
hereby certify that I reported the foregoing
proceedings in stenographic shorthand and that the
foregoing pages are a true and correct transcript of
those proceedings and was reduced to printed form
under my direct supervision.

I FURTHER CERTIFY that I am neither
employed by nor related to any of the parties or
attorneys in this case and that I have no interest
in the final disposition of this case.

PAUL BACA
NM Certified Court Reporter No. 112
License Expires: 12/31/09